

PUBLIC COPY

identifying data deleted to
prevent disclosure of information
invasion of personal privacy

B4

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
AAO, BCIS, 20 Mass, 3/F
Washington, D.C. 20536

JUL 24 2003

File: [REDACTED] Office: TEXAS SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:

[REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be summarily dismissed.

The petitioner is engaged in investing in small businesses. It seeks to employ the beneficiary as its president. Accordingly, it endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director determined that the petitioner had not established that the beneficiary was more than a first-line supervisor, had not established that it employed professional employees, and had not established that the beneficiary was performing executive or managerial duties, rather than operational duties. The director concluded that the petitioner had not established that the beneficiary had been or would be employed in a managerial or executive capacity for the United States petitioner.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

On the Form I-290B Notice of Appeal, filed on October 23, 2002, counsel asserts that the petition was erroneously denied based on the company's number of employees. Counsel submits a letter asserting that the beneficiary satisfies the criteria set out in the definition of executive capacity. Counsel confirms in the letter that the beneficiary works as a sales clerk for a convenience store but states that his duties as a sales clerk are for a limited amount of time every business day. Counsel indicates that the beneficiary hopes to add employees in the future leaving the beneficiary free to pursue other business matters and opportunities for the majority of the workweek.

The record contains the Georgia Employer's Quarterly Tax and Wage Report filed by an entity owning a convenience store that was allegedly purchased by the petitioner. The report covers the quarter in which the petition was filed and shows the beneficiary as the only employee for that quarter. Counsel confirms that the beneficiary works as a sales clerk for the convenience store. The record does not contain documentary evidence that the petitioner has other employees to perform the operational tasks necessary to operate a convenience store. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec.

593, 604 (Comm. 1988). Counsel confirms that the beneficiary hopes to hire additional employees to relieve the beneficiary to pursue other business matters and opportunities for the majority of the week. This statement implies that the beneficiary cannot primarily perform executive tasks because he is required to perform the operational tasks of the convenience store. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Counsel's conclusory assertion that the beneficiary satisfies the statutory criteria for an executive is not sufficient for the purposes of an appeal. Counsel's assertion that the director erroneously based the decision on the petitioner's number of employees is not substantiated in the record. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The director's decision, rather, was based on the evidence in the record demonstrating that the beneficiary was primarily performing operational tasks. Counsel confirms this finding on appeal. Counsel does not specifically identify any errors made by the Bureau when making its decision. Inasmuch as counsel does not identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the regulations mandate the summary dismissal of the appeal. 8 C.F.R. § 103.3(a)(1)(v).

ORDER: The appeal is summarily dismissed.